



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1998

Mr. David B. Casas
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR98-2508

Dear Mr. Casas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID #119045.

The City of San Antonio (the "city") received a request for a copy of the personnel file of Mr. Michael Genovesi on June 15, 1998. You assert that the requested information is excepted from disclosure based on section 552.103 of the Government Code. The city did not request an opinion from this office until August 7, 1998. When a governmental body fails to request a decision within 10 days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston[1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* This office has previously held that a demonstration of the applicability of section 552.103 does not constitute a compelling reason to overcome a presumption of openness. *See* Open Records Decision No. 473 (1987) (Gov't Code § 552.103).

On June 15, 1998 the City of San Antonio received a letter containing a notice of claim pursuant to Section 101.101 of the Texas Civil Practice and Remedies Code and the Texas Tort Claims Act as well as a request for information. You argue that you have not waived the litigation exception in this case because the requestor submitted a virtually identical notice of claim and request for a personnel file in another matter and this office issued a letter ruling dated March 31, 1998 permitting the city to withhold the requested information pursuant to section 552.103 of the Government Code. Open Records Letter No. 98-0863 (1998) states that

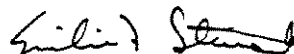
[t]his ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records.

ORL No. 98-0863 at 2. The attorney general is authorized to determine what constitutes a "previous determination." *Houston Chronicle Publ'g Co. v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989). A governmental body seeking to withhold particular information under a particular exception must request our decision as to whether it may do so. Open Records Decision No. 435 (1986). Having failed to meet the requirements of Section 552.301, you have waived the litigation exception and must release the requested information.

One of the documents you submit to this office is subject to the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. The MPA protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. We have marked the medical record that may only be released as provided by the MPA.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 119045

Enclosures: Submitted documents

cc: Ms. Nelda J. Ortiz
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(w/o enclosures)